

**ASSEMBLY BILL**

**No. 2523**

**Introduced by Assembly Member Thomson**

February 24, 2000

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An act to amend Sections 417, 417.6, and 1170.1 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2523, as introduced, Thomson. Firearms: unlawful display.

(1) Existing law provides that every person who, except in self-defense, in the presence of another draws or exhibits any firearm, loaded or unloaded, in a rude, angry or threatening manner, or who in any manner unlawfully uses a firearm in any fight or quarrel, is guilty of a misdemeanor punishable by imprisonment in a county jail for not less than 3 months.

This bill would provide that if the firearm is a pistol, revolver, or other firearm capable of being concealed upon the person and is not an antique firearm, as defined, and the person is not listed with the Department of Justice as the registered owner of the firearm, a violation of these provisions is punishable by imprisonment in the state prison, or by imprisonment in a county jail, by a fine not to exceed \$1,000, or by both that fine and imprisonment. This bill would also make technical, nonsubstantive changes to these and related provisions. The bill would provide that when a consecutive term of imprisonment is imposed for a person convicted of this crime or the crime of drawing or exhibiting a weapon with intent to resist or prevent their own arrest or the arrest of

another by a peace officer, the aggregate term may consist of the full term for each violation for which a consecutive term of imprisonment is imposed. By creating a new crime, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 417 of the Penal Code is  
2 amended to read:

3 417. (a) (1) Every person who, except in  
4 self-defense, in the presence of any other person, draws  
5 or exhibits any deadly weapon whatsoever, other than a  
6 firearm, in a rude, angry, or threatening manner, or who  
7 in any manner, unlawfully uses ~~the same~~ *a deadly weapon*  
8 *other than a firearm* in any fight or quarrel is guilty of a  
9 misdemeanor, punishable by imprisonment in a county  
10 jail for not less than 30 days. ~~Every person who violates~~  
11 ~~this section when the other person is in the process of~~  
12 ~~cleaning up graffiti or vandalism is guilty of a~~  
13 ~~misdemeanor, punishable by imprisonment in a county~~  
14 ~~jail for not less than three months nor more than one year.~~

15 (2) Every person who, except in self-defense, in the  
16 presence of any other person, draws or exhibits any  
17 firearm, whether loaded or unloaded, in a rude, angry, or  
18 threatening manner, or who in any manner, unlawfully  
19 uses ~~the same~~ *a firearm* in any fight or quarrel is ~~guilty of~~  
20 *punishable as follows:*

21 (A) *If the firearm is a pistol, revolver, or other firearm*  
22 *capable of being concealed upon the person which is not*  
23 *an antique firearm as defined in paragraph (16) of*  
24 *subsection (a) of Section 921 of Title 18 of the United*  
25 *States Code and that person is not listed with the*

1 *Department of Justice pursuant to Section 11106 as the*  
2 *registered owner of that firearm, by imprisonment in the*  
3 *state prison, or by imprisonment in a county jail, by a fine*  
4 *not to exceed one thousand dollars (\$1,000), or by both*  
5 *that fine and imprisonment.*

6 (B) *In all cases other than that set forth in*  
7 *subparagraph (A), a misdemeanor, punishable by*  
8 *imprisonment in a county jail for not less than three*  
9 *months. Every person who violates this section when the*  
10 *other person is in the process of cleaning up graffiti or*  
11 *vandalism is guilty of a misdemeanor, punishable by*  
12 *imprisonment in a county jail for not less than three*  
13 *months nor more than one year.*

14 (b) Every person who, except in self-defense, in the  
15 presence of any other person, draws or exhibits any  
16 loaded firearm in a rude, angry, or threatening manner,  
17 or who, in any manner, unlawfully uses any loaded  
18 firearm in any fight or quarrel upon the grounds of any  
19 day care center, as defined in Section 1596.76 of the  
20 Health and Safety Code, or any facility where programs,  
21 including day care programs or recreational programs,  
22 are being conducted for persons under 18 years of age,  
23 including programs conducted by a nonprofit  
24 organization, during the hours in which the center or  
25 facility is open for use, shall be punished by imprisonment  
26 in the state prison for one, two, or three years, or by  
27 imprisonment in a county jail for not less than three  
28 months, nor more than one year.

29 (c) Every person who, in the immediate presence of  
30 a peace officer, draws or exhibits any firearm, whether  
31 loaded or unloaded, in a rude, angry, or threatening  
32 manner, and who knows, or reasonably should know, by  
33 the officer's uniformed appearance or other action of  
34 identification by the officer, that he or she is a peace  
35 officer engaged in the performance of his or her duties,  
36 and that peace officer is engaged in the performance of  
37 his or her duties, shall be punished by imprisonment in a  
38 county jail for not less than nine months and not to exceed  
39 one year, or in the state prison.

*(d) Except where a different penalty applies, every person who violates this section when the other person is in the process of cleaning up graffiti or vandalism is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months nor more than one year.*

*(e) As used in this section, “peace officer” means any person designated as a peace officer pursuant to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.*

SEC. 2. Section 417.6 of the Penal Code is amended to read:

417.6. (a) If, in the commission of a violation of Section 417,~~417.1~~, or 417.8, serious bodily injury is intentionally inflicted by the person drawing or exhibiting the firearm or deadly weapon, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.~~As~~

*(b) As used in this section, “serious bodily injury” means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.*

~~(b)~~  
*(c) When a person is convicted of a violation of Section 417,~~417.1~~, or 417.8 and the deadly weapon or firearm used by the person is owned by that person, the court shall order that the weapon or firearm be deemed a nuisance and disposed of in the manner provided by Section 12028.*

*(d) The penalty prescribed in this section is in addition to the punishment prescribed by Section 417 or 417.8.*

SEC. 3. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivisions (b) and (c), and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a

1 different court, and a consecutive term of imprisonment  
2 is imposed under Sections 669 and 1170, the aggregate  
3 term of imprisonment for all these convictions shall be  
4 the sum of the principal term, the subordinate term, and  
5 any additional term imposed for applicable  
6 enhancements for prior convictions, prior prison terms,  
7 and Section 12022.1. The principal term shall consist of  
8 the greatest term of imprisonment imposed by the court  
9 for any of the crimes, including any term imposed for  
10 applicable specific enhancements. The subordinate term  
11 for each consecutive offense which is not a “violent  
12 felony,” as defined in subdivision (c) of Section 667.5,  
13 shall consist of one-third of the middle term of  
14 imprisonment prescribed for each other felony  
15 conviction for an offense that is not a violent felony for  
16 which a consecutive term of imprisonment is imposed,  
17 and shall exclude any specific enhancements. The  
18 subordinate term for each consecutive offense which is a  
19 “violent felony,” as defined in any paragraph of  
20 subdivision (c) of Section 667.5, shall consist of one-third  
21 of the middle term of imprisonment prescribed for each  
22 other felony conviction for an offense that is a violent  
23 felony for which a consecutive term of imprisonment is  
24 imposed, and shall include one-third of the term imposed  
25 for any specific enhancements applicable to those  
26 subordinate offenses.

27 (b) (1) When a consecutive term of imprisonment is  
28 imposed under Sections 669 and 1170 for two or more  
29 convictions for kidnapping, as defined in Section 207,  
30 involving separate victims, the aggregate term shall be  
31 calculated as provided in subdivision (a), except that the  
32 subordinate term for each subordinate kidnapping  
33 conviction shall consist of the full middle term for each  
34 kidnapping conviction for which a consecutive term of  
35 imprisonment is imposed and shall include the full term  
36 imposed for specific enhancements applicable to those  
37 subordinate offenses.

38 (2) *When a consecutive term of imprisonment is*  
39 *imposed under Sections 669 and 1170 for a person*  
40 *convicted of a violation of Section 417 or 417.8, the*

1 *aggregate term may consist of the full term for each*  
2 *violation for which a consecutive term of imprisonment*  
3 *is imposed.*

4 (c) In the case of any person convicted of one or more  
5 felonies committed while the person is confined in a state  
6 prison or is subject to reimprisonment for escape from  
7 custody and the law either requires the terms to be served  
8 consecutively or the court imposes consecutive terms, the  
9 term of imprisonment for all the convictions that the  
10 person is required to serve consecutively shall commence  
11 from the time the person would otherwise have been  
12 released from prison. If the new offenses are consecutive  
13 with each other, the principal and subordinate terms shall  
14 be calculated as provided in subdivision (a). This  
15 subdivision shall be applicable in cases of convictions of  
16 more than one offense in different proceedings, and  
17 convictions of more than one offense in the same or  
18 different proceedings.

19 (d) When the court imposes a prison sentence for a  
20 felony pursuant to Section 1170, the court shall also  
21 impose the additional terms provided for any applicable  
22 enhancements. The court shall also impose any other  
23 additional term that the court determines in its discretion  
24 or as required by law shall run consecutive to the term  
25 imposed under Section 1170. In considering the  
26 imposition of the additional term, the court shall apply  
27 the sentencing rules of the Judicial Council.

28 (e) All enhancements shall be alleged in the  
29 accusatory pleading and either admitted by the  
30 defendant in open court or found to be true by the trier  
31 of fact.

32 (f) When two or more enhancements may be imposed  
33 for being armed with or using a dangerous or deadly  
34 weapon or a firearm in the commission of a single offense,  
35 only the greatest of those enhancements shall be imposed  
36 for that offense. This subdivision shall not limit the  
37 imposition of any other enhancements applicable to that  
38 offense, including an enhancement for the infliction of  
39 great bodily injury.

(g) When two or more enhancements may be imposed for the infliction of great bodily injury in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or a firearm.

(h) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, Section 667.6, or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.